JABATAN PERIKANAN LAUT v. LAU HUI TING & ANOTHER APPEAL

HIGH COURT SABAH & SARAWAK, SIBU
WONG SIONG TUNG J
[CRIMINAL APPEAL NOS: SBW-42(ORS)-1-9-2024
& SBW-42(ORS)-1-3-2025]
17 JUNE 2025

Abstract – *(i) A notice of appeal in a criminal proceeding, which omits an express statement addressing it to the High Court, cannot be reasonably construed as a notice intended to specifically inform or communicate to the High Court the intention to appeal. Such failure to fulfil the essential function of a formal notification to the High Court, required under s. 307(1) of the Criminal Procedure Code ('CPC'), renders the notice of appeal defective and invalid; (ii) When an accused person is dissatisfied with any such judgment, sentence or order of the subordinate courts in a criminal case or matter and wishes to appeal to the High Court against the same, he or she has to lodge a notice of appeal within the prescribed time period in accordance with s. 307(1) and (2) of the CPC. Compliance with the time period prescribed is a statutory requirement, and non-compliance would render the appeal incompetent*

CRIMINAL PROCEDURE: *Appeal – Notice of appeal – Requirements – Preliminary objections raised – Whether objection to service by email rather than personal service premature – Lodgement and filing of documents in criminal cases electronically – Whether could be done regardless of court office hours – Whether notice of appeal ought to be addressed to High Court – Omission of express statement – Failure to fulfil essential function of formal notification to High Court – Whether notice of appeal defective and invalid – Criminal Procedure Code, s. 307(1)*

CRIMINAL PROCEDURE: *Appeal – Notice of appeal – Requirements – Preliminary objections raised – Compliance with time period prescribed under s. 307(1) of Criminal Procedure Code – Whether statutory requirement – Failure to lodge notice of appeal within prescribed time – Whether non-compliance rendered appeal incompetent – Whether s. 307 applies equally to both prosecution and accused*

The accused pleaded guilty before the Sessions Court to a charge of possessing a fishing appliance, namely a trawl net, on a vessel in Malaysian fisheries waters without a licence, in contravention of s. 11(3)(b) of the Fisheries Act 1985 ('Act'). Following the guilty plea, the Sessions Court convicted the accused and imposed a sentence of a fine of RM8,000, with six months' imprisonment in default of payment. The Sessions Court did not make an order under s. 33(1) of the Act for cancellation of licence or permit as no such licence or permit was issued in relation to the seized trawl net.

A However, pursuant to s. 52(1) of the same Act, the Sessions Court ordered the forfeiture of the trawl net and the proceeds from the sale of fish, amounting to RM250, to the Government of Malaysia. The Deputy Public Prosecutor ('DPP') filed a notice of appeal challenging that part of the Sessions Court's decision which ordered the return of the vessel licence to
B the accused and declined to order the forfeiture of the vessel and all related equipment. Subsequently, the accused filed a notice of appeal against the sentence. The accused also filed a notice of appeal and intended to raise a preliminary objection against the prosecution's notice of appeal. The accused submitted that: (i) the prosecution had failed to personally serve a filed copy
C of the notice of appeal on the appellant under s. 314(1) of the Criminal Procedure Code ('CPC'); (ii) the notice of appeal served lacked an endorsement with a verification code and was not addressed to the High Court; and (iii) the prosecution's notice of appeal was lodged out of time as it was only filed on Friday, 20 September 2024, at 6.55pm after court office hours and was only subsequently signed and sealed by the court officer in
D charge on the following Monday, 23 September 2024. The DPP, however, submitted that the prosecution's notice of appeal was validly served *via* email, and that the court has a discretion to proceed with the appeal under s. 314(2) of the CPC despite imperfect service. The prosecution also raised a preliminary objection to the accused's notice of appeal dated and lodged
E on 27 September 2024 on the ground that it was lodged out of time as prescribed under s. 307 of the CPC.

Held (striking out notices of appeal):

(1) An appellant's sole obligation under the provisions of the CPC is to
F lodge the notice of appeal and later, the petition of appeal with the lower courts within the prescribed timelines. There is no requirement for the appellant to serve those documents on the respondent. Since there is no legal requirement for the prosecution to serve the notice of appeal personally on the accused, and given that the record of appeal had not
G yet been transmitted by the lower court nor had a hearing date been filed by the Senior Assistant Registrar for the hearing of the substantive appeal, the objection to service by email, rather than personal service on the accused or their advocates, was premature and without merit. Accordingly, it could not be upheld to invalidate the prosecution's appeal. (paras 29, 30 & 34)

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(2) With respect to the lodgment and filing of documents in criminal cases after court office hours, the CPC contains no provision comparable to O. 62 r. 8 of the Rules of Court 2012, which deemed service of documents effected after 12pm on a day preceding a weekly holiday, or
I after 4pm on any other weekday, as having been served on the next working day for the purpose of computing time. However, for electronic judgment or filing of documents in criminal cases, the Practice Direction

of the Chief Justice No 2 of 2018 (Arahan Amalan Ketua Hakim Negara Bil 2 Tahun 2018) – Dealing with Criminal Documents Electronically Throughout Courts of Malaysia made by the Chief Justice, by paras. 12 and 13, provides that electronic filing of documents may be done at any time, 24 hours a day, seven days a week, regardless of court office hours. Documents filed electronically before 11.59pm or midnight on a given day are to be treated as filed on that same day, even if submitted outside court office hours, and not to be treated as filed on the next working day. In the premises, the prosecution's notice of appeal dated 20 September 2024, though filed at 6.55pm, after court office hours but before 11.59pm, was deemed to have been filed on the same day and was therefore validly lodged and in time. Accordingly, the accused's preliminary objection on this ground was unsustainable. (paras 40-44)

(3) Though there is no provision in the CPC that prescribes the format or form for notice of appeal under s. 307(1) of the CPC, the notice of appeal must reasonably be meant to give notice that it is an appeal against any specific or particular judgment, sentence or order pronounced by the lower court and, though it is to be lodged in the lower courts, s. 307(1) of the CPC expressly requires the notice to be addressed to the High Court. This requirement is intended to specifically and clearly inform the High Court of the appellant's intention to challenge a particular decision of the lower court. The prosecution's notice of appeal, which omitted an express statement addressing it to the High Court, could not be reasonably construed as a notice intended to specifically inform or communicate to the High Court the intention to appeal. As such, it failed to fulfil the essential function of a formal notification to the High Court, as required under s. 307(1) of the CPC. The prosecution's notice of appeal was defective and invalid for failing to expressly and clearly state that it was addressed to the High Court, as required under s. 307(1) of the CPC. (paras 55-58)

(4) Though under s. 310 of the CPC, the court has the discretion to permit an appeal even if the appellant had failed to comply with a procedural formality or requirement under the CPC, the discretion may be exercised on application by the intending appellant and is subject to any terms or directions the court considers appropriate to ensure that substantial justice is done. The prosecution made no application to make any amendment to rectify the defects in the notice of appeal. In the premises, the accused's preliminary objection to the prosecution's notice of appeal, on the ground that it failed to state that it was addressed to the High Court, succeeded. Accordingly, the prosecution's notice of appeal had to be struck out. (paras 60-62)

(5) Section 307 of the CPC, including s. 307(3), applies to both the prosecution and the accused alike when intending to appeal to the High Court against any judgment, sentence, or order pronounced by any subordinate courts in a criminal case or matter. When an accused person is dissatisfied with any such judgment, sentence, or order of the subordinate courts in a criminal case or matter and wishes to appeal to the High Court against the same, he or she has to lodge a notice of appeal within the prescribed time period in accordance with s. 307(1) and (2) of the CPC. An accused person cannot wait and see whether the prosecution will lodge any appeal in respect of any judgment, sentence, or order of any subordinate court and decide whether to lodge his or her appeal. Conversely, the same applied to the prosecution. The provision of s. 307 of the CPC operates independently and applies equally to both the prosecution and the accused. The prescribed 14-day period for filing a notice of appeal applies uniformly to either party seeking to appeal against any judgment, sentence, or order of a subordinate court. The accused's notice of appeal dated 27 September 2024 and lodged on the same date against the decision of the Sessions Court made on 6 September 2024 regarding the sentence concerned which the accused intended to appeal was therefore plainly out of time. Compliance with the time period prescribed under s. 307(1) of the CPC is a statutory requirement. Non-compliance rendered the appeal incompetent. (paras 67-75)

(6) This court upheld the accused's preliminary objection to the prosecution's notice of appeal dated 20 September 2024 for non-compliance with s. 307(1) of the CPC, specifically its failure to indicate that it was addressed to the High Court. This court also upheld the DPP's preliminary objection to the accused's notice of appeal dated 27 September 2024 for non-compliance with the same provision, namely the failure to lodge the notice within the prescribed 14-day period. Both notices of appeal ought to be struck out. (paras 76-78)

Case(s) referred to:

JJH Enterprises Ltd (Trading As Value Licensing) v. Microsoft Ireland Operations Ltd & Ors [2023] 1 WLR 1155 ***(refd)***

Liew Sung Yong v. PP [2013] 2 CLJ 1089 HC ***(refd)***

PP v. Chew Kuok Leh [1998] CLJU 209; [1998] 1 LNS 209 HC ***(refd)***

PP v. Hwong Yu Hee & Ors [2014] 9 CLJ 985 HC ***(refd)***

PP v. Mohamad Alraziq Ramli (No 2) [2021] 10 CLJ 112 HC ***(refd)***

PP v. Vijaya Raj [1980] CLJU 188; [1980] 1 LNS 188 ***(refd)***

Re Keyworker Homes (North West) Ltd [2019] All ER (D) 194 ***(refd)***

Sa'adon Abdullah v. PP [1997] CLJU 489; [1997] 1 LNS 489 HC ***(refd)***

Sarikei District Council v. Hamzah Kiprawi & Ors [1997] 5 CLJ 542 HC ***(refd)***

Veerasingam v. PP [1957] CLJU 93; [1957] 1 LNS 93 HC ***(refd)***

Legislation referred to:
Criminal Procedure Code, ss. 272J, 272K, 303A, 307(1), (3), 308, 310, 312, 313, 314(1), (2), 422
Fisheries Act 1985, ss. 11(3)(b), 33(1), 52(1)
Interpretation Acts 1948 and 1967, s. 54(1)(a)
Rules of Court 2012, O. 55 r. 8, O. 62 r. 8

For the prosecution - Nur Masrin Amalia Amiruddin; DPP
For the accused - Chong Chieng Jen & Sim Kiat Leng; M/s Chong Brothers Advocs

Reported by Suhainah Wahiduddin

JUDGMENT

Wong Siong Tung J:

Brief Backgrounds

[1] To avoid confusion, the court will refer the parties as they were referred to in the Sessions Court, namely, the prosecution as "the prosecution" and the accused as "the accused."

[2] On 6 September 2024, the accused pleaded guilty before the Sessions Court in Sarikei to a charge of possessing a fishing appliance, namely a trawl net, on a vessel in Malaysian fisheries waters on 14 February 2023 without a licence, in contravention of s. 11(3)(b) of the Fisheries Act 1985.

[3] Following the guilty plea, the Sessions Court convicted the accused and imposed a sentence of a fine of RM8,000, with six months' imprisonment in default of payment.

[4] The Sessions Court did not make an order under s. 33(1) of the Fisheries Act 1985 for cancellation of licence or permit as no such licence or permit was issued in relation to the seized trawl net (exh. P20).

[5] However, pursuant to s. 52(1) of the same Act, the Sessions Court ordered the forfeiture of the trawl net (exh. P20) and the proceeds from the sale of fish (exh. P8), amounting to RM250, to the Government of Malaysia.

[6] The Sessions Court also ordered the return of one booklet of "Lesen Vesel Dan Alat" (exh. P7) to the rightful owner by the prosecution after the lapse of appeal period.

[7] The Deputy Public Prosecutor (DPP) filed a notice of appeal dated and lodged on 20 September 2024, challenging that part of the Sessions Court's decision which ordered the return of the vessel licence (SFI-1082) to the accused and declined to order the forfeiture of the vessel and all related equipment.

[8] Subsequently, the accused also filed a notice of appeal dated and lodged on 27 September 2024. The notice states that the appeal is against the sentence. It also states that the appeal is a cross-appeal in response to the notice of appeal lodged by the prosecution.

[9] The prosecution's appeal was registered as Criminal Appeal No. SBW-42(ORS)-1-9-2024 and was first called for case management before the Senior Assistant Registrar (SAR) on 30 October 2024. During the case management, the court was informed that the accused had also filed a notice of appeal and intended to raise a preliminary objection to the prosecution's appeal on the ground that it had been served on his advocates out of time.

[10] The matters were called for case management again on 28 November 2024 and 24 January 2025 before the learned SAR. Notwithstanding that the record of appeal had yet to be prepared and transmitted to this court, the accused sought to have his preliminary objection heard. Consequently, the SAR directed that written submissions be filed for the purpose of a hearing on the preliminary objection.

[11] The accused filed his written submission under encl. 7 in Criminal Appeal No. SBW-42(ORS)-1-9-2024, referring to himself as "the appellant." Similarly, the prosecution filed their written submission under encl. 9, also referring to themselves as "the appellant."

[12] Notably, in their written submissions, the prosecution also raised a preliminary objection to the accused's notice of appeal dated and lodged on 27 September 2024, on the ground that it was lodged out of time as prescribed under s. 307 of the Criminal Procedure Code (CPC).

[13] When Criminal Appeal No. SBW-42(ORS)-1-9-2024 was called for a hearing of the preliminary objections on 6 March 2024 before this court, considerable confusion arose, as both the prosecution and the accused were referred to as "the appellant", a situation that is procedurally untenable.

[14] Unlike O. 55 r. 8 of the Rules of Court 2012, which governs appeals to this court in civil matters from decisions of the lower courts, there is no corresponding provision in the CPC for cross-appeals in criminal cases. In criminal cases, each appeal by the prosecution and the accused stands as an independent appeal. To avoid confusion, the court directed that the respondent's/accused's notice of appeal dated and lodged on 27 September 2024 be assigned and registered under a separate criminal appeal number.

[15] Accordingly, the accused's notice of appeal dated and lodged on 27 September 2024 was assigned and registered as Criminal Appeal No. SBW-42(ORS)-1-3-2025.

Preliminary Objection To The Prosecution's Notice Of Appeal In Criminal Appeal No. SBW-42(ORS)-1-9-2024

Submissions On Behalf Of The Accused

[16] As for the preliminary objection of the accused to the prosecution's notice of appeal, learned counsel for the accused submitted that the prosecution has failed to personally serve a filed copy of the notice of appeal on the appellant under s. 314(1) of the CPC.

[17] Learned counsel for the accused also submitted that the notice of appeal served lacked an endorsement with a verification code and was not addressed to the High Court.

[18] Learned counsel for the accused further submitted that the prosecution's notice of appeal was also lodged out of time, as it was filed only on Friday, 20 September 2024, at 6.55pm, after court office hours, and was only subsequently signed and sealed by the court officer-in-charge on the following Monday, 23 September 2024.

Submissions On Behalf Of The Prosecution

[19] Learned DPP in summary, submitted that the prosecution's notice of appeal was validly served *via* email, and the advocates for the accused acknowledged it by filing a "cross-appeal". She submitted that the court has a discretion to proceed with the appeal under s. 314(2) of the CPC despite imperfect service.

[20] She submitted that minor errors, such as missing verification codes or addresses are curable irregularities under s. 422 of the CPC, and do not invalidate the appeal unless they cause prejudice, which the appellant has not demonstrated.

Prescribed Procedures For Criminal Appeals – Analysis And Findings

[21] As to the procedure for appeal against the decision of the subordinate courts in criminal matters, s. 307 of the CPC provides:

> 307 Procedure for appeal
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> (1) Except in any case to which section 305 applies and subject to sections 305 and 306 any person who is dissatisfied with any judgment, sentence or order pronounced by any Magistrate's Court *in a criminal case or matter to which he is a party may prefer an appeal to the High Court* against that judgment, sentence or order in respect of any error in law or in fact or on the ground of the alleged excessive severity or of the alleged inadequacy of any *sentence by lodging, within fourteen days from the time of the judgment, sentence or order being passed or made, with the clerk of the Magistrate's Court a notice of appeal in triplicate addressed to the High Court* and by paying at the same time the prescribed appeal fee.
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> (2) Every notice of appeal shall contain a postal address or an electronic address at which any notices or documents connected with the appeal *may be served upon the appellant or upon his advocate.*
>
> [(2) Am. Act A1662: s. 2]
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> (3) When a notice of appeal has been lodged, *the Court appealed from shall make a signed copy of the grounds of decision in the case and cause the said copy to be served upon the appellant or his advocate -*
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> (a) by leaving it at the postal address of the appellant or his advocate;

A (b) by posting it by registered post addressed at the postal address of the appellant or his advocate; or

(c) by sending it to the electronic address of the appellant or his advocate,

mentioned in the notice of appeal.

B [(3) Subs. Act A1662: s. 2]

(3A) The signed copy of the grounds of decision which is sent by electronic means referred to in paragraph (3)(c) *shall be deemed to have been served and delivered upon sending the said copy to the appellant's or his advocate's electronic address.*

C [(3A) Ins. Act A1662: s. 2]

(4) Within fourteen days after the copy of the grounds of decision has been served as provided in subsection (3), *the appellant shall lodge with the clerk of the Magistrate's Court* at which the trial was held a *petition of appeal* in triplicate *addressed to the High Court.*

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(5) If the appellant within the period provided in subsection (1) for lodging his notice of appeal has applied for a copy of the notes of the evidence recorded by the Magistrate at his trial he shall lodge his petition of appeal as provided in subsection (4) -

E (a) within the period provided by such subsection; or

(b) within a period of fourteen days from the date when a notice is served at his postal address or electronic address specified in subsection (2) that a copy of the notes of evidence can be had free of charge,

F [(b) Am. Act A1662: s. 2]

whichever period shall be the longer.

(6) Every petition of appeal shall state shortly the substance of the judgment appealed against and shall contain definite particulars of the points of law or of fact in regard to which the Court appealed from is alleged to have erred.

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(7) (a) If the appellant is in prison he shall be deemed to have complied with the requirements of this section if he gives to the officer in charge of the prison either orally or in writing notice of appeal and the particulars required to be included in the petition of appeal within the times prescribed by this section and pays the prescribed appeal fee.

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(b) Such officer shall immediately forward the notice and petition or the purport thereof together with the appeal fee to the clerk of the Magistrate's Court at which the trial was held.

(8) In the case of an appeal by the Public Prosecutor no fee shall be payable.

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(9) If a petition of appeal is not lodged within the time prescribed by this section the appeal shall be deemed to have been withdrawn and the trial Court shall enforce its sentence or order if any stay of execution has been granted, but nothing herein contained shall be deemed to limit or restrict the powers conferred upon a Judge by section 310.

(emphasis added)

[22] Section 308 of the CPC provides that:

308 Transmission of appeal record

When the appellant has complied with section 307 the Court appealed from shall transmit to the High Court and *to the Public Prosecutor and to the advocate for the appellant* a signed copy of the record of the proceedings and of the grounds of the decision together with a copy of the notice and of the petition of appeal. (emphasis added)

[23] Section 312 of the CPC provides that:

312 Setting down appeal on list

(1) If the Judge does not reject the appeal summarily he shall hand the documents mentioned in section 308 *to the Registrar, who shall number the appeal and enter it on the list of appeals to be heard and give notice to the parties that the appeal has been so entered.*

(2) As soon as a date has been fixed *the Registrar shall give to the parties notice of the date of hearing of the appeal.*

(3) In any case a Judge may, of his own motion or on the application of a party concerned and with reasonable notice to the parties, accelerate or postpone the hearing of an appeal. (emphasis added)

[24] Sections 313 and 314 of the CPC provide the procedure at the hearing of the appeal, particularly when parties did not attend to the hearing.

[25] Section 313 of the CPC provides that:

313 Procedure at hearing

(1) When the appeal comes on for hearing the appellant, if present, shall be first heard in support of the appeal, the respondent, if present, shall be heard against it, and the appellant shall be entitled to reply.

(2) If the appellant does not appear to support his appeal the Court may consider his appeal and may make such order thereon as it thinks fit:

Provided that the Court may refuse to consider the appeal or to make any such order in the case of an appellant who is out of the jurisdiction or who does not appear personally before the Court in pursuance of a condition upon which he was admitted to bail, except on such terms as it thinks fit to impose.

[26] Section 314 of the CPC then provides that:

314 Non-appearance of respondent

(1) If, at the hearing of the appeal, *the respondent is not present and the Court is not satisfied that the notice of appeal was duly served upon him, then the Court shall not make any order in the matter of the appeal adverse to or to the prejudice of the respondent, but shall adjourn the hearing of the appeal to a future day for his appearance, and shall issue the requisite notice to him for service through the Registrar.*

(2) If the service of the last-mentioned notice cannot be effected on the respondent the Court shall proceed to hear the appeal in his absence.

(emphasis added)

[27] Under s. 303A of CPC, any reference in these provisions in the same chapter to a Magistrate and a Magistrates' Court shall be deemed to include a reference to a "President of Sessions Court", or a "Sessions Court" where applicable and shall be construed accordingly.

[28] From the provisions as set out, the procedures prescribed for appeal from a lower court and in this case, the Sessions Court to the High Court are in summary as follows:

(i) a person dissatisfied with a judgment, sentence, or order from a Sessions Court may file a notice of appeal to the High Court within 14 days of the decision. This notice must be lodged with the clerk of the Sessions Court, addressed to the High Court, and accompanied by the prescribed fee except for the Public Prosecutor, who is exempt;

(ii) upon lodging the notice of appeal, the Sessions Court has to prepare a signed copy of the grounds of the decision and serve it to the appellant or their advocate at the address provided in the notice of appeal, by post, electronic means, or personal delivery;

(iii) within 14 days after being served with the grounds of the decision, the appellant must file a petition of appeal with the Sessions Court clerk, detailing the errors of law or fact in the judgment of the Sessions Court;

(iv) once the appellant complies with s. 307 of the CPC, the Magistrates' Court transmits the appeal record, including the grounds of decision, notice of appeal, and petition of appeal, to the High Court, the Public Prosecutor, and the appellant's advocate;

(v) upon receipt of the record of appeal, if the High Court Judge did not summarily dismiss the appeal, the Registrar assigns a case number, enters the appeal on the hearing list, and notifies the parties of the hearing date; and

(vi) if the appellant fails to appear on the date fixed for hearing of the appeal, the court may proceed or dismiss the appeal, depending on the circumstances. If the respondent is absent and the court is not satisfied

that the respondent was duly served, the court will adjourn the hearing and order the Registrar to effect proper service but court will hear the appeal in the respondent's absence if service cannot be affected.

Obligation To Serve The Notice Of Appeal And Record Of Appeal

[29] An appellant's sole obligation under the provisions of the CPC is to lodge the notice of appeal, and later, the petition of appeal with the lower courts within the prescribed timelines.

[30] There is no requirement for the appellant to serve those documents on the respondent. See: *PP v. Chew Kuok Leh* [1998] CLJU 209; [1998] 1 LNS 209.

[31] Under s. 308 of the CPC, it is for the lower court (*ie*, the court appealed from) "to transmit" the record of appeal (including the signed copy of the record of proceedings and grounds of decision and copies of the notice of appeal and petition of appeal) to the High Court, the Public Prosecutor, and the appellant's advocate. There is no statutory deadline for the lower court to prepare or transmit the appeal record to the parties concerned.

[32] Under s. 312 of the CPC, after the appeal is registered in the High Court, it is the Registrar of the High Court who shall notify all parties of the hearing date fixed, and there is also no statutory timeframe for the Registrar to do so.

[33] Under the provisions of the CPC as set out, it seems that the High Court will only hear the substantive merits of the appeal once the entire record of appeal has been prepared and transmitted under s. 308 of CPC.

[34] Since there is no legal requirement for the prosecution to serve the notice of appeal personally on the accused, and given that the record of appeal has not yet been transmitted by the lower court nor has a hearing date been fixed by the SAR for hearing of the substantive appeal, the objection to service by email, rather than personal service on the accused or their advocates, is premature and without merit. Accordingly, it cannot be upheld to invalidate the prosecution's appeal.

Lodgement Of Notice Of Appeal By Electronic Means

[35] The court will address the accused's preliminary objection that the prosecution's notice of appeal was lodged out of time, before considering the remaining two grounds concerning the form of the notice of appeal.

[36] The Sessions Court's decision, which the prosecution seeks to appeal, was delivered on 6 September 2024.

[37] Pursuant to s. 307(1) of the CPC, and applying s. 54(1)(a) of the Interpretation Acts 1948 and 1967 (Consolidated and Revised 1989) (Act 388), the date of the decision (6 September 2024) is excluded from the

computation of the 14-day period. Accordingly, the final day for the prosecution to lodge the notice of appeal was 20 September 2024, which is a Friday.

[38] The prosecution's notice of appeal, dated 20 September 2024, was lodged electronically through the digital application system, namely, the "e-Kehakiman Sabah and Sarawak system" (e-KSS), with the Sessions Court at 6.55pm on that date, which was after court office hours.

[39] The issue to be determined is whether the prosecution's notice of appeal is deemed to have been lodged only on the next working day of the court, namely Monday, 23 September 2024, following its submission after court office hours on 20 September 2024, a Friday.

[40] With respect to the lodgement and filing of documents in criminal cases after court office hours, the CPC contains no provision comparable to O. 62 r. 8 of the Rules of Court 2012, which deems service of documents effected after 12pm on a day preceding a weekly holiday, or after 4pm on any other weekday, as having been served on the next working day for the purpose of computing time.

[41] However, for electronic lodgement or filing of documents in criminal cases, s. 272J of the CPC provides:

> 272J. Electronic filing, lodgement, submission and transmission of document
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> Where any **document relating to any proceedings is required to be filed, lodged with,** submitted or transmitted to the Court, such filing, lodgement, submission or transmission **may be done electronically as may be determined by the Court.** (emphasis added)

[42] Section 272K of the CPC provides that:

> 272K Issuance of practice direction
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> The Chief Justice may, where necessary, issue Practice Direction relating to the use of mechanical means and any matter related to it.

[43] The Practice Direction of the Chief Justice No 2 of 2018 (Arahan Amalan Ketua Hakim Negara Bil 2 Tahun 2018) – Dealing with Criminal Documents Electronically Throughout Courts of Malaysia, made by the Chief Justice and which came into operation throughout the courts of Malaysia on 20 August 2018, by paras. 12 and 13, provides as follows:

> FILING AND REGISTRATION
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> …
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> 12. (1) **Electronic filing of a document may be done 24 hours a day and 7 days a week.**

(2) If a new criminal case or application needs to be heard on the day of filing, the case or the application shall be filed on or before 10.00 am. If registration is done after 10.00 am, the case will be heard on the following day. However, the courts shall have the discretion to hear the case on the same day.

(3) For proceedings of detention under section 117 of the Criminal Procedure Code or its equivalent, the time of hearing is determined by the respective courts.

13. **A document is considered to be successfully filed upon receipt of the document by the digital application system.** Proof of filing will be printed on the document concerned. (emphasis added)

[44] The provision provides that electronic filing of documents may be done at any time, 24 hours a day, seven days a week, regardless of court office hours.

[45] The digital application system known as the "e-Kehakiman Sabah and Sarawak" (e-KSS) is designed and operated in accordance with the Chief Justice's Practice Direction No. 2 of 2018. It permits the electronic filing of documents 24 hours a day, seven days a week, without being restricted to court office hours. The system also records the exact time each document is submitted for filing.

[46] In the absence of any explicit requirement restricting electronic filing to court office hours, this court is of the view that documents filed electronically before 11.59pm or midnight on a given day are to be treated as filed on that same day, even if submitted outside court office hours, and not to be treated as filed on the next working day.

[47] In *JJH Enterprises Ltd (Trading As Value Licensing) v. Microsoft Ireland Operations Ltd & Ors* [2023] 1 WLR 1155; [2022] EWCA Civ 1509, the appellant (Microsoft Ireland Operations Ltd) filed its notice of appeal electronically with the Court of Appeal at 4.52pm on 6 June 2022, the last day allowed for filing. The notice of appeal was filed after court office hours which ended at 4.30pm. The opposing party (JJH Enterprises Ltd) contended that the filing was out of time and should have been filed before 4.30pm. Microsoft Ireland Operations Ltd sought a declaration that the notice was filed in time under (UK) CPR Practice Direction 51O, which governs electronic filing.

[48] Similar to para. 12 of the Practice Direction of the Chief Justice No 2 of 2018, (UK) CPR Practice Direction 51O allows parties to file documents and issue proceedings electronically at any time, 24 hours a day, including outside regular court office hours, on weekends and public holidays.

[49] The UK Court of Appeal affirmed the master's ruling that the notice of appeal was filed by Microsoft Ireland Operations Ltd in time. The Court of Appeal held that since under PD 51O, para 2.1, documents can be filed

A electronically 24 hours a day, including outside of court office hours and as there is no express provision limiting electronic filing to office hours, the notice of appeal was validly filed on the same day, before midnight. See also: *Re Keyworker Homes (North West) Ltd* [2019] All ER (D) 194.

B **[50]** In the premises, and for the reasons stated, this court holds that the prosecution's notice of appeal dated 20 September 2024, though filed at 6.55pm, after court office hours but before 11.59pm, is deemed to have been filed on the same day and is therefore validly lodged and in time. Accordingly, the accused's preliminary objection on this ground is unsustainable.

C **Endorsement Of Verification Code**

[51] As to the submission that the prosecution's notice of appeal lacked the verification code, the filed copy of the prosecution's notice of appeal was accepted and sealed by the court officer-in-charge *albeit* on 23 September 2024 and with a verification code No. "13-1206731-6244077-7913951-encl. No: 11". Thus, this ground for the accused's preliminary objection cannot be sustained.

D **Requirement For Notice Of Appeal To Be Addressed To The High Court**

[52] With regard to the submission that the prosecution's notice of appeal was not addressed to the High Court, the prosecution's notice of appeal does not, indeed contain an express statement indicating that it is addressed to the High Court, as required under s. 307(1) of the CPC.

E **[53]** In *Sarikei District Council v. Hamzah Kiprawi & Ors* [1997] 5 CLJ 542; [1997] 5 MLJ 328, the notice of appeal filed by the appellant, though titled "notice of appeal", did not expressly state that the appellant intended to appeal to the High Court against the Magistrate's order. Specifically, it omitted the phrase "appeals to the High Court against the said order." The notice merely conveyed dissatisfaction with the order without explicitly declaring an intention to appeal.

F **[54]** In that case, the court rejected the appellant's contention that there was substantial compliance with s. 307 of the CPC on the basis that the document was titled "notice of appeal" and that a reasonable reader would understand it to be a notice of appeal against the lower court's decision. The court held that the omission was material and rendered the notice of appeal defective and bad in law.

G **[55]** Though, there is no provision in the CPC that prescribes the format or form for notice of appeal under s. 307(1) of the CPC, the notice of appeal must reasonably mean to give notice that it is an appeal against any specific or particular judgment, sentence or order pronounced by the lower court and, though it is to be lodged in the lower courts, s. 307(1) of the CPC expressly required the notice to be addressed to the High Court.

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[56] This requirement is intended to specifically and clearly inform the High Court of the appellant's intention to challenge a particular decision of the lower court.

[57] The prosecution's notice of appeal dated 20 September 2024, which omits an express statement addressing it to the High Court, cannot be reasonably construed as a notice intended to specifically inform or communicate to the High Court the intention to appeal. As such, it fails to fulfil the essential function of a formal notification to the High Court, as required under s. 307(1) of the CPC.

[58] For the reasons stated, the court is of the view that the prosecution's notice of appeal is defective and invalid for failing to expressly and clearly state that it is addressed to the High Court, as required under s. 307(1) of the CPC.

[59] With regard to the learned Deputy Public Prosecutor's submission that the defect is merely an irregularity curable under s. 422 of the CPC, it must be noted that s. 422 applies only to findings, sentences, or orders made by a lower court that are affected by any error, omission, or irregularity in the complaint, sanction, consent, summons, warrant, charge, judgment, or other proceedings before or during trial, or in any inquiry or other proceeding, or by the want of sanction or improper admission or rejection of evidence, provided such defects do not result in a failure of justice. Section 422 of CPC can have no application to a notice of appeal.

[60] Though under s. 310 of the CPC, the court has the discretion to permit an appeal even if the appellant has failed to comply with a procedural formality or requirement under the CPC, however, the discretion may be exercised on application by the intending appellant and is subject to any terms or directions the court considers appropriate to ensure that substantial justice is done.

[61] The prosecution made no application to make amendment to rectify the defects in the notice of appeal. See: *PP v. Hwong Yu Hee & Ors* [2014] 9 CLJ 985; [2014] AMEJ 1296; [2015] 11 MLJ 138; *Liew Sung Yong v. PP* [2013] 2 CLJ 1089; [2012] AMEJ 0178; and *Veerasingam v. PP* [1957] CLJU 93; [1957] 1 LNS 93; [1958] 1 MLJ 76 at p. 79.

[62] In the premises, the accused's preliminary objection to the prosecution's notice of appeal, on the ground that it failed to state that it was addressed to the High Court, succeeds. Accordingly, the prosecution's notice of appeal has to be struck out.

Preliminary Objection To The Prosecution's Notice Of Appeal In Criminal Appeal No. SBW-42(ORS)-1-3-2025 And Submissions Thereon

Whether The Accused's "Cross-appeal" Was Filed Out Of Time

[63] The learned DPP submitted that the accused's notice of appeal dated 27 September 2024 stated as a cross-appeal is lodged out of the mandatory period of within 14 days as prescribed under s. 307(1) of the CPC, and there being no application for extension of time, hence, the appeal should be dismissed.

[64] Learned counsel for the accused, on the other hand, submitted that during the case management before the learned SAR on 23 January 2025, the learned DPP has stated that they had no objections to the accused's cross-appeal.

[65] Accordingly, learned counsel contended this constitutes a waiver of the prosecution's right to object to the accused's notice of appeal and thus, making their subsequent objections raised in DPP's submission in reply untenable.

[66] As stated earlier, unlike O. 55 r. 8 of the Rules of Court 2012 applicable in civil cases, there is no provision in the CPC for cross-appeal in criminal cases.

[67] Section 307 of the CPC including s. 307(3) of CPC applies to both the prosecution and the accused alike when intending to appeal to the High Court against any judgment, sentence or order pronounced by any subordinate courts in a criminal case or matter.

[68] When an accused person is dissatisfied with any such judgment, sentence or order of the subordinate courts in a criminal case or matter and wished to appeal to the High Court against the same, he or she has to lodge a notice of appeal within the prescribed time period in accordance with s. 307(1) and (2) of the CPC.

[69] An accused person cannot wait and see whether the prosecution will lodge any appeal in respect of any judgment, sentence or order of any subordinate courts and to decide whether to lodge his or her appeal.

[70] Conversely, the same applies to the prosecution. The provisions of s. 307 of the CPC operate independently and apply equally to both the prosecution and the accused. The prescribed 14-day period for filing a notice of appeal applies uniformly to either party seeking to appeal against any judgment, sentence, or order of a subordinate court.

[71] The accused's notice of appeal dated 27 September 2024 and lodged on the same date against the decision of the Sessions Court made on 6 September 2024 regarding the sentence concerned, which the accused intended to appeal, is therefore plainly out of time.

[72] With regard to learned counsel's reliance on the case of *Sa'adon Abdullah v. PP* [1997] CLJU 489; [1997] 1 LNS 489; [1997] MLJU 469 to support his submission of the existence of a permissible practice of cross-appeal in criminal matters, it is noted that, in that case the issue of whether the CPC provides for cross-appeals or prescribes a specific timeframe for lodging one is not raised as an issue. It is also unclear from the judgment in that case, when the lower court's decision was made, or whether the "cross-appeal" referred to in the judgment was, in fact, by a separate notice of appeal lodged by the prosecution. Furthermore, there was no issue of whether such a notice of appeal was filed within the time limit prescribed by the Code.

[73] With regard to learned counsel for the accused's contention that the learned DPP had waived the right to object to the accused's notice of appeal on this ground, it must be emphasised that compliance with the time period prescribed under s. 307(1) of the CPC is a statutory requirement. Non-compliance renders the appeal incompetent.

[74] In the premises, non-compliance with the statutory requirement in this respect is not legally capable of being waived by the learned DPP. See: *PP v. Vijaya Raj* [1980] CLJU 188; [1980] 1 LNS 188; [1981] 1 MLJ 43; *Liew Sung Yong v. PP* (*supra*) and *PP v. Mohamad Alraziq Ramli (No. 2)* [2021] 10 CLJ 112; [2021] AMEJ 1317; [2021] 11 MLJ 894.

[75] Furthermore, the accused has also not made any application for an extension of time to file the notice of appeal.

Pronouncement And Orders

[76] Therefore, for the reasons stated above, the court upholds the accused's preliminary objection to the prosecution's notice of appeal dated 20 September 2024 for non-compliance with s. 307(1) of the CPC, specifically its failure to indicate that it is addressed to the High Court.

[77] The court also upholds the Deputy Public Prosecutor's preliminary objection to the accused's notice of appeal dated 27 September 2024 for non-compliance with the same provision, namely the failure to lodge the notice within the prescribed 14-day time period.

[78] Accordingly, the court orders both the prosecution's notice of appeal in Criminal Appeal No. SBW-42(ORS)-1-9-2024 and the accused's notice of appeal in Criminal Appeal No. SBW-42(ORS)-1-3-2025 be struck out.